

2

No. 91-985

Supreme Court, U.S.

FILED

JAN 10 1992

OFFICE OF THE CLERK

In The
Supreme Court Of The United States
October Term, 1991

—◆—
ZBIGNIEW S. ROZBICKI,
Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,
Respondent.

—◆—
ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CONNECTICUT
(Docket 14101)

—◆—
RESPONDENT'S BRIEF IN OPPOSITION

—◆—
SEYMOUR N. WEINSTEIN
671 Bedford Street
Stamford, CT 06901
(203) 324-2126

Counsel of Record for Respondent

January 10, 1992

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
REASON FOR DENYING WRIT	1
CONCLUSION	4

TABLE OF AUTHORITIES

CASES	PAGE
<i>Hoffman Estates v. Flipside</i> , 455 US 495, 102 S Ct 1186 (1982)	3
<i>In re Ruffalo</i> , 390 US 544, 88 S Ct 1222, 20 L Ed2d 117 (1968)	2
<i>Kansas v. Phelps</i> , 266 Kan 371, 592 P2d 180 (1979)	2
<i>Matter of Phelps</i> , 637 F2d 171 (10 Cir. 1981)	3
<i>Parker v. Levy</i> , 417 US 760, 94 S Ct 2547 (1974)	3
<i>Phelps v. Kansas</i> , 444 US 1045, 100 S Ct 732, 62 L Ed2d 731 (1979)	2
<i>Ruffalo v. Mahoning County Bar Assn.</i> , 379 US 931, 85 S Ct 328, 13 L Ed2d 342 (1964)	2
<i>Zauderer v. Office of Disciplinary Counsel</i> , 471 US 626, 105 S Ct 2265, 85 L Ed2d 652 (1985)	2

In The
Supreme Court Of The United States
October Term, 1991

—◆—
ZBIGNIEW S. ROZBICKI,
Petitioner,

v.

STATEWIDE GRIEVANCE COMMITTEE,
Respondent.

—◆—
ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CONNECTICUT
(Docket 14101)

—◆—
REASONS FOR DENYING THE PETITION

This matter involves the peculiar and unique relationship between a Connecticut practicing attorney and the Superior Court of the State of Connecticut, the state trial court, the entity responsible for oversight of attorney conduct. Petitioner charges that the grievance proceeding lacked due process and claims that two disciplinary rules are void because of vagueness.

1. Petitioner's reasons for granting the petition are not within the guides in Rule 10 of the Rules of the

Supreme Court of the United States. The Connecticut court has not decided an important question of federal law or decided a federal question that conflicts with applicable decisions of this Court.

2. Petitioner claims that he was found to be in violation of the disciplinary rules upon charges not brought by respondent in presenting petitioner to the trial court. The trial court specified all the facts found based upon the evidence presented to it by petitioner and respondent over the course of seven days and no surprises or new matter were presented (Memorandum of Decision, petitioner's appendix, pp. 27-32).

This court has chosen not to interfere with state regulation of attorneys except in extraordinary circumstances. In *Zauderer v. Office of Disciplinary Counsel*, 471 US 626, 105 S Ct 2265, 85 L Ed2d 652 (1985) the first amendment of the United States Constitution was implicated but due process was not violated by the state grievance procedures.

In *In re Ruffalo*, 390 US 544, 88 S Ct 1222, 20 L Ed2d 117 (1968), the appellant challenged disbarment by the federal court for a charge that arose out of evidence first elicited in testimony before the state court, the facts not having been before the grievance board nor part of the allegations presented to the court. The state court disbarred the appellant and the federal court disbarred the appellant based upon the record before the state court. This court denied certiorari to the state court proceeding. *Ruffalo v. Mahoning County Bar Assn.*, 379 US 931, 85 S Ct 328, 13 L Ed2d 342 (1964).

This court also denied certiorari to *Kansas v. Phelps*, 226 Kan 371, 592 P2d 180 (1979), at *Phelps v. Kansas*,

444 US 1045, 100 S Ct 732, 62 L Ed2d 731 (1979). The state court found that the record presented from the state board of law examiners supported a violation in addition to the ones recommended. In *Matter of Phelps*, 637 F2d 171 (10 Cir., 1981), the lawyer was not sanctioned by the federal court from practice at the federal bar, the state court sanction remaining, nonetheless.

3. Connecticut's Code of Professional Responsibility with respect to DR 1-102(A)(6) and DR 7-101(A)(3) is not unconstitutionally vague under the Fourteenth Amendment of the United States Constitution. DR 1-106(A)(6) proscribes a lawyer's conduct that reflects adversely on his fitness to practice law. DR 7-101(A)(3) proscribes any action by a lawyer that will prejudice or damage his client.

As in *Parker v. Levy*, 417 US 760, 94 S Ct 2547 (1974), petitioner as a lawyer is a member of a prescribed class who had fair notice that his conduct was prohibited and he could not attack the rule simply "because the language would not give similar fair warning with respect to other conduct which might be within its broad and literal ambit." at p. 756. *Parker* involved the proscription of conduct unbecoming to an officer and gentleman and which prejudiced the good order and discipline of the armed forces. Absent interference with a fundamental right such as free speech, petitioner as a knowledgeable member of a class (lawyer) must demonstrate clearly that the challenged rules are vague in all applications to be deemed constitutionally infirm. *Hoffman Estates v. Flipside*, 455 US 495, 497-499, 102 S Ct 1186 (1982).

4. The Connecticut Supreme Court did not hold that reference to specific sections of the Code of Professional

Responsibility is not required in a presentment for attorney misconduct. Its reasoning in affirmance of the decision of the Superior Court, the court which heard all the evidence in a trial *de novo*, is embodied within all the pages of its opinion. Petitioner's appendix, pp. 1-16. Petitioner attempts to bootstrap a due process violation through a footnote and avoid the body of the opinion. The footnote is not the decision of the court.

◆

CONCLUSION

The suspension of petitioner from the practice of law for ninety days was sustainable under the evidence and the application of the law governing attorney misconduct. No violations of due process occurred and the rules of attorney misconduct as applied were not constitutionally vague.

This court should not grant a petition involving the inherent authority of a state court to regulate its members' conduct except in extraordinary circumstances.

For the reasons presented, the petition for a writ of certiorari should be denied.

Respectfully submitted,
SEYMOUR N. WEINSTEIN
671 Bedford Street
Stamford, CT 06901
(203) 324-2126

Counsel for Respondent

